SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner,

—vs.—

STATE OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

REPLY BRIEF FOR PETITIONER

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Respondent's brief (pp. 9-19) attempts to defend the general constitutional validity of its Communist Control Law, Article 6889-3, and Suppression of Communist Party Law, Article 6889-3A. Respondent's concern for the validity of the entirety of these laws is justified. If the Control and Suppression Laws, apart from the invalidity of Section 9 of the latter, violate the First, Fifth, and Fourteenth Amendments on their face, then the seizure of petitioner's property and respondent's intended prosecution of petitioner (Resp. Brief, p. 9) are wholly without foundation.

Petitioner contended in the court below that, in addition to the defects in Section 9, the Control and Suppression Laws as a whole violate on their face the First, Fifth, and Fourteenth Amendments of the Constitution (R. 4-5, 13-14).

Although the Control Law and the Suppression Law attempt to regulate a multitude of activities, petitioner believes they must stand or fall on the basis of their definitions of the persons, organizations, and actions they purport to cover.[1]

I. The Control Law

Section 4 of the Control Law requires the registration with the Texas Department of Public Safety of any person,

> ". . . who is a Communist or is knowingly a member of a Communist Front Organization. . . ."

as well as every officer of the Communist Party and of Communist Front organizations. Failure to register or to provide the information required by the statute is a felony punishable by a fine of $1,000 to $10,000 and imprisonment for not less than 2 nor more than 10 years under Section 4(D).

Sections 1, 2, and 3 of the Control Law supply the statutory definitions. They are discussed in turn below.

"Communist"

Section 1 contains four sub-parts, each offering an alternative definition of a "Communist". Each of them is constitutionally invalid.

> *Definition A*: A Communist is a person who "is a member of the Communist Party; notwithstanding the fact that he may not pay dues to, or hold a card in, said Party."

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[1] Although the Control Law, Article 6889-3, contains a severability provision in its Section 9, as a matter of logic and statutory construction one cannot separate from the definitional sections discussed below any operative part of the two acts, save perhaps Section 5 of the Control Law, dealing with sabotage.

Compulsory registration for membership in the Communist Party plainly inhibits the freedom of association normally protected by the First Amendment.[2] Though this Court in several of its decisions has recognized certain narrow exceptions to the reach of First Amendment protections when required by the threat of violent overthrow [e.g., *Dennis* v. *United States*, 341 U. S. 494 (1951)], it has seen fit to limit the exceptions to active and knowing rather than merely nominal membership where the Communist Party is concerned, a distinction the Texas statute fails to recognize. *Noto* v. *United States*, 367 U. S. 290 (1961); *Scales* v. *United States*, 367 U. S. 203 (1961); *Yates* v. *United States*, 354 U. S. 298, 331 (1957). Moreover, the definition of "Communist" in subsection A, fails to provide "terms susceptible of objective measurement." *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 286 (1961). The likelihood that the definition of a "member" may be applied to a delicately shaded range of affiliation, from active to passive to inactive, and to past membership as well, is grounds for declaring it too vague for rational application. *Baggett* v. *Bullitt*, 377 U. S. 360 (1964).

> *Definition B*: A Communist is a person who "knowingly contributes funds or any character of property to the Communist Party."

Although the donation of money or property to the Party may be one indication of active and knowing membership, due process, particularly in a First Amendment context, forbids its being elevated to conclusive evidence of membership. The relationship between contribution of funds or property and membership, is as indeterminate as the relationship between membership and total subscription to policy.

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[2] See Petitioner's Brief, p. 18, note 3.

> "[M]en ir adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." *Aptheker* v. *United States*, 378 U. S. 500, 510 (1964).

> *Definition C*: A Communist is a person who "Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence."

The language "reasonably calculated to further the overthrow" is so broad and susceptible to selective application that it fails to meet the constitutional distinctions, required by *Yates*, *supra*, between advocacy of abstract doctrine and advocacy that incites to action. 354 U. S. 320, 322-327 (1957). Furthermore, the language fits perfectly Mr. Justice Holmes' definition of the vague statute. It requires one "to divine prophetically what the reaction of only partially determinate facts would be . . .," thereby seeking "to exact gifts that mankind does not possess." *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 223-224 (1914).

> *Definition D*: A Communist is a person who "Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites."

This section is subject to the same criticism for vagueness as "C" above but is aggravated by substituting "unlawful or unconstitutional means" for "by force and violence." Thus, as in *Baggett* v. *Bullitt*, 377 U. S. 360 (1964), the language requires "foreswearing of an undefined variety of 'guiltless knowing behavior' . . ."

"Communist Party"

> "Sec. 2 The 'Communist Party' is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which in any manner advocates, or acts to further, the world Communist movement."

Here, too, vagueness rules, for the definition is no more "susceptible of objective measurement" (*Cramp*, *supra*, at 286) than are the preceding sections. What "satellites," we may ask. Those under Soviet domination at the time the statute was adopted thirteen years ago, or today? Albania? Yugoslavia?

The Subversive Activities Control Act's scheme for defining a Communist-action organization contains the minimum requirements which must be met to save this kind of definition from impermissible vagueness. *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961). That Congressional Act, in addition to defining a Communist-action organization in general language basically not dissimilar to the statute involved here,[3] refines its definition by somewhat more specific determinants.[4] The Texas statute contains no such refinement.

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[3] Sec. 3 (3) (a), 50 U. S. C. Sec. 782 (3) (a).

[4] Sec. 13 (e), 50 U. S. C. Sec. 792 (e).

Communist Front Organization

> "Sec. 3 A 'Communist Front Organization' is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement."

Here also Texas has drawn upon the Subversive Activities Control Act, but it has neglected to follow the logical path of including the refinements contained in the federal statute. The Subversive Activities Control Act contains more than the bare definition that Texas has adopted. In Section 13(f) of the federal statute [50 U. S. C. Sec. 792(f)], Congress undertook to provide more specific guides to the definition of a Communist-front. Certainly, nothing less will satisfy the constitutional command of specificity.[5]

The vagueness that pervades every section of the Control Act is its principal constitutional defect. *Baggett* v. *Bullitt, supra.* It is made the more noxious because its purpose and effect is to invade the freedoms guaranteed by the First Amendment. This Court has pointed out time and again that the Constitution does not tolerate vague statutory language which trenches on First Amendment freedoms. Very recently, in *N.A.A.C.P.* v. *Button*, 371 U. S. 415, 432-33 (1963), the Court said:

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[5] We respectfully call to the Court's attention the amicus curiae brief of the American Civil Liberties Union in *Veterans of the Abraham Lincoln Brigade and American Committee for Protection of the Foreign Born* v. *Subversive Activities Control Board*, Nos. 65 and 44, this Term, which challenges the constitutionality of the "Front" provisions of the Subversive Activities Control Act, particularly pp. 37-42, 43-50.

> "[I]n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. . . . The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. . . . These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions."[6]

II. The Suppression Law

The Suppression Law is closely modeled after Section 3 of the Communist Control Act of 1954, 50 U. S. C. Sec. 842.[7] The broad sweep of Section 2 of the Suppression Law purports to make illegal the Communist Party and

> "all other organizations . . . which . . . advocate, abet, advise, or teach, or a purpose of which is to . . . advocate, abet, advise, or teach any activities intended to . . . alter . . . the constitutional form of government [of the United States or Texas] by force or violence".

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[6] It hardly has to be pointed out that the Texas Control Law is unconstitutional for the additional reason that it contains no hearing procedure whatsoever. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123 (1951).

[7] This Court has said of Section 3 of the Communist Control Act:

> "Apart from unrevealing random remarks during the course of debate in the two Houses, there is no legislative history which in any way serves to give content to its vague terminology." *Communist Party* v. *Catherwood*, 367 U. S. 389, 392-93 (1961).

This plainly offends the Court's disapproval of virtually identical language in the 1955 loyalty oath statute struck down in *Baggett* v. *Bullitt*, *supra*.

In addition, Section 4 of the Suppression Law attempts to establish a rule of evidence by which bare "affiliation" of any group, with any "parent or superior organization" which advocates, abets, advises, or teaches violent destruction or alteration of the existing form of government, is "prima facie evidence" that the affiliated group is also an organization which engages in or teaches or advises violent overthrow of the government. Presumably, the purpose of the affiliation, no matter how innocent or unrelated to the advocacy of proscribed doctrine, is irrelevant under the statute. Section 4 thus violates the due process precepts of *Baggett* v. *Bullitt*, *supra*, *Wieman* v. *Updegraff*, 344 U. S. 183 (1952) and *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*, by setting indiscriminate traps for innocent behavior. As Mr. Justice Clark, speaking for the Court in *Wieman*, noted:

> "At the time of affiliation, a group itself may be innocent, only later coming under the influence of those who would turn it toward illegitimate ends. Conversely, an organization formerly subversive . . . may have subsequently freed itself from the influences which originally led to its listing. 344 U. S. at 190."

The vice of Section 4 of the Suppression Law is compounded when coupled with the language of Section 5(4) which declares mere membership (presumably even for one day) in any organization which advocates, abets, advises, or teaches violent overthrow or alteration of government a felony punishable by up to $20,000 fine and 20 years imprisonment. Thus, participation in a legal defense group, for example, which is later found by Texas authorities to be "affiliated" with a subversive organization is

prima facie evidence of the commission of a criminal offense under Section 5. The creation of a presumption of guilt in the sensitive area of the political speech action spectrum which must be rebutted by a defendant in order to escape conviction is anathema. "[T]he free dissemination of ideas may be the loser." *Smith* v. *California*, 361 U. S. 147, 151 (1959); *Speiser* v. *Randall*, 357 U. S. 513 (1958).

CONCLUSION

The Texas Communist Control Law and Suppression of Communism Law are potent reminders of the mischief which can be done to First Amendment freedoms. "It would be blinking reality not to acknowledge that there are some among us ready to affix a Communist label upon those whose ideas they violently oppose." *Cramp*, *supra* at 286-287.

The condemnation of individuals by means of the simplistic label, under vague statutory language which ignores the most basic considerations of due process, serves no rational purpose. The First Amendment protects unpopular ideas and unpopular associations against suppression, and even discouragement. See *Bantam Books* v. *Sullivan*, 372 U. S. 58, 68-72 (1963). Indeed, the First Amendment is best served when it supports and encourages political associations free of government intrusion.

> "This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 462 (1958). See too *Gibson* v. *Florida*, 372 U. S. 539, 562-65 (1963).

This Court's decisions in *N.A.A.C.P.* v. *Alabama*, and others like it, including *Bates* v. *Little Rock*, 361 U. S. 516 (1960), *Shelton* v. *Tucker*, 364 U. S. 479 (1960), *N.A.A.C.P.* v. *Button*, 371 U. S. 415 (1963), and *Gibson* v. *Florida Legislative Committee*, 372 U. S. 539 (1963), are not strangers to the Texas officials. They trust, no doubt, that the absence of racial overtones in this case will save the statutes. But the Court must fix its vision on the central fact before it that the two statutes involved have led the State of Texas to believe it has the power to ransack a man's home, seize a mass of literature that is a part of the world's intellectual heritage, and threaten to use the literature as evidence in a criminal prosecution to convict petitioner of political heresy.

Respectfully submitted,

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